

BYU Law Review

Volume 2003 | Issue 2

Article 7

5-1-2003

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Recommended Citation

Dusan Rakitic, *Achievements and Future Goals of the Government of Serbia in the Field of Religious Freedom*, 2003 BYU L. Rev. 625 (2003).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2003/iss2/7>

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Achievements and Future Goals of the Government of Serbia in the Field of Religious Freedom

Dusan Rakitic

I. INTRODUCTION

The Kingdom of the Serbs, Croats, and Slovenes, established in 1918, soon became the scene of major disputes. After World War II, Josip Broz Tito's strict authoritarian leadership dominated the political climate of Yugoslavia.¹ During the 1980s, however, failing communist systems and other political forces began to cause significant ideological shifts in Central and Eastern Europe. By the time the Berlin Wall crumbled in 1989, the communist regime in Serbia faced strong demands from democratic opposition parties to hold multi-party elections.² As a result, Serbia held multi-party elections in December 1990 in which Slobodan Milošević won the presidential election with two-thirds of the vote.³

Despite the urging for true democratic reform in Serbia, Milošević's post-communist authoritarian regime remained in power for the next ten years.⁴ The regime's longevity may be attributed to

1. See Dusan T. Batakovic, *Nationalism and Communism: The Yugoslav Case*, 9 SERBIAN STUDIES 25 (1995). Batakovic notes that "[t]he victory of the Communists in the civil war, gained with the decisive support of the Red Army in 1944, resulted in a Leninist-type federation, based upon 'brotherhood and unity' of all Yugoslav peoples" *Id.* at 30. At the Eighth Congress of the Communist League of Yugoslavia, held in December 1964, Tito suddenly abandoned the idea of creating a single Yugoslav nation. He stressed that the policy of Yugoslavism was an excuse for "assimilation and bureaucratic centralism, unitarism and Great Serbian hegemony." See BRANKO PETRANOVIC, THE YUGOSLAV EXPERIENCE OF SERBIAN NATIONAL INTEGRATION 99 (2002). Later, in 1991, the Socialist Federal Republic of Yugoslavia broke up into five successor states, one of which was the Federal Republic of Yugoslavia. Carsten Stahn, *The Agreement on Succession Issues of the Former Socialist Federal Republic of Yugoslavia*, 96 AM. J. INT'L L. 379, 379-81 (2002). Last year, on March 14, 2002, the constituent republics of the Federal Republic of Yugoslavia signed an accord, agreeing to rename the federation Serbia and Montenegro. See Boris Milosavljevic, *Relations Between the State and Religious Communities in the Federal Republic of Yugoslavia*, 2002 BYU L. REV. 311, 311 n.1.

2. See LESLIE BENSON, YUGOSLAVIA: A CONCISE HISTORY 155-58 (2001).

3. See *id.* at 158; JOHN R. LAMPE, YUGOSLAVIA AS HISTORY: TWICE THERE WAS A COUNTRY 361 (2d ed. 2000).

4. See BENSON, *supra* note 2, at 175-78.

two factors. First, the regime used propaganda, secret police, and political and economic power to influence and manipulate election results.⁵ Second, because of ethnic conflicts in neighboring Croatia, Bosnia, and Herzegovina and internal strife in Kosovo and Metohija,⁶ the authoritarian regime was able to take advantage of national sentiments in Serbia and strengthen its political grip on the country.⁷

Under such a background, one can understand how the government of Serbia faced severe problems in the area of religious freedom after the overthrow of Milošević's regime in October 2000. Fifty years of communism and ten years of Milošević's rule created strained relations between the state and Serbian churches and religious communities (hereinafter "religious communities").⁸

5. Milošević's success has been attributed to "his control of the media" and "firm grip on the [political] system." BENSON, *supra* note 2, at 158; LAMPE, *supra* note 3, at 381.

6. "Kosovo and Metohija is the formal name of the province. Metohija means 'land of churches' and refers to the western part of the province, near the Albanian border, where many of the finest Orthodox monasteries and holy sites are located." Steven Erlanger, *Crisis in the Balkans: A Minority; For Serbs in Kosovo, Frustration and Anger*, N.Y. TIMES, June 10, 1999, at A1. To make this translation more precise, the name Metohija has its root in Greek and means "land of church agricultural properties, i.e. church land." VOJIN JOKSIMOVICH, KOSOVO CRISIS: A STUDY IN FOREIGN POLICY MISMANAGEMENT 12 (1999). The spiritual importance of Kosovo and Metohija helps explain why the area remains so important to Serbian national consciousness. "State and religion formed a sacral society. Kosovo and Metohija became the cradle of the Serbian civilization—the source of its national and cultural identity . . ." *Id.*

7. As Aristotle explained twenty-four centuries ago, an exterior conflict, while it lasts, unifies the population and strengthens the position of the ruler within that society. ARISTOTLE, POLITICS, BOOK V, part XI ("The tyrant is also fond of making war in order that his subjects may have something to do and be always in want of a leader."); see also Diana Johnstone, *Collective Guilt and Collective Innocence*, COVERTACTION Q. (1999), at http://www.covertaction.org/full_text_68_02a.htm. Diana Johnstone notes the following:

When a nation is deeply divided, the leader who can succeed is the one whose ambiguity can create a semblance of unity. The ability to be "all things to all men" is often the key to political success. What was really wrong with Milosevic was what was also his biggest political asset: his ambiguity. . . . He was the political magician who could get rid of communist "bureaucracy" but maintain a reassuring continuity, defend both Serbian interests and Yugoslavism, and combine reformed socialism with economic privatization.

Id.; see also John F. Burns, *Conflict in the Balkans; Serbia's Enigma: An Aloof Leader Who Stoked Fires of Nationalist Passion*, N.Y. TIMES, Dec. 22, 1992, at A16.

8. October 2000 marked the end of approximately sixty years of Serbia's existence under an atheistic regime. See Milosavljevic, *supra* note 1, at 314; see also LAMPE, *supra* note 3, at 237 ("Communist-sponsored associations of priests, established for each republic by 1947, sought to subvert the authority of all the religious hierarchies"); Bureau of Democracy, Human Rights and

Additionally, due to the previous ten years of ethnic conflict, a lack of trust existed between the religious communities themselves.⁹

Since ethical and moral recovery of a society facilitates democratic development and rapid economic progress, the Serbian government's Ministry of Religions focuses on three principal areas of concern: (1) the reinforcement of religious freedom as a basic human right, (2) cooperation between the state and the Serbian religious communities, and (3) increased respect and cooperation between the various religious communities. Cooperation between the state and religious communities and among religious communities themselves rests upon the parallel observance of two basic principles: (a) the separation of church and state and (b) positive emphasis on the significance of religious communities in both the modern world and in Serbian society, especially with regard to the history, tradition, education, humanitarian work, and spiritual and cultural values of the Serbian people.

The Serbian government, in particular the Ministry of Religions, has used four principle means to reinforce religious freedom and reestablish cooperation between the state and religious communities and between religious communities themselves: (1) creating the Draft Law on Religious Freedom, (2) reestablishing religious education in schools, (3) providing restitution and indemnification for religious property appropriated after World War II, and (4) regulating the religious aspect of the media sphere, especially through enacting the Law on Broadcasting.

After this article was written, but before it was published, the first Prime Minister of the government of Serbia to be democratically elected in sixty years, Dr. Zoran Djindjic, was assassinated on March 12, 2003. In his capacity of Prime Minister from January 2001 until March 2003, Dr. Zoran Djindjic provided both initiative and crucial support for the described aims of the Ministry of Religions, particularly for designing and implementing the reestablishment of

Labor, U.S. Dep't of State, International Religious Freedom Report for Federal Republic of Yugoslavia (Oct. 2001), *at* <http://www.state.gov/g/drl/rls/irf/2001/5700.htm>.

9. Because of the close tie between ethnicity and religion, distinguishing between discrimination centered primarily on ethnicity versus discrimination based principally on religion is sometimes difficult. In any case, several conflicts existed between Serbian communities. Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, Country Reports on Human Rights Practices 2001: Federal Republic of Yugoslavia (Mar. 2001), *at* <http://www.state.gov/g/drl/rls/hrrpt/2001/eur/8369.htm>.

religious education, as well as drafting the law on restitution and indemnification for property appropriated after World War II and religious aspects of the Law on Broadcasting.

This article looks at three of the methods of promoting religious freedom.¹⁰ Part II discusses religious education, Part III discusses privatization of property, and Part IV discusses the Law on Broadcasting. The article concludes that Serbia is overcoming five decades of discrimination against believing citizens by focusing on projects that promote equality between believing and non-believing citizens.

II. RELIGIOUS EDUCATION

The first project in which Serbia's Ministry of Religions has engaged in with respect to freedom of religion has been the reestablishment of religious education as part of the public schools' curriculum. This section begins by outlining the mechanisms that enable religion to be part of public school education. Then, it discusses the legal norms governing religious education.

A. Principles of the Return of Religious Education to Public Schools

The return of religious education to schools signaled the end of five and a half decades under a system of atheistic, ideological education.¹¹ Under the current system, students may choose to receive religious or civic education as part of their public education. The first and second grades of both primary and secondary state schools already offer religious and civic education to students as alternative elective subjects. In the future, these subjects will also become part of the curriculums of other grade levels.

The government's ordinance on the Organization and Conduct of Religious Education and Alternative Subject Teaching in Primary and Secondary Schools, enacted in July 2001,¹² as well as

10. The article, however, does not address the Draft Act on Religious Freedom; that enactment is discussed in Milosavljevic, *supra* note 1, at 317–21. See also Draft Act on Religious Freedom, at <http://www.religlaw.org/template.php3?id=553>.

11. Prior to this change, "the [Yugoslav] educational system advanced the concept that belief in God was a terrible thing—backward and primitive." Milosavljevic, *supra* note 1, at 314.

12. Official Gazette of the Republic of Serbia, No. 46/2001 (July 27, 2001).

amendments to the Law on Primary Education¹³ and Law on Secondary Education,¹⁴ adopted at the end of April 2002, provided the legal framework within which religious and civic education returned to schools. As a result of the introduction of religion into public schools, the educational system of Serbia has improved in three ways. First, the inclusion of religious education in state schools, with its powerful reinforcement of social values, promotes the development of students as free and responsible persons. Second, supplementing public education with religious teachings helps students better understand European culture and art, which predominantly involves such religious themes. Third, allowing an upbringing and education consistent with religious beliefs gives students the opportunity to enjoy the basic human rights of religious observance and expression.

The number of religious communities that have received the right to conduct religious education in Serbia is among the highest in Europe and in the world. Seven different religious communities are participating in the process—the Serbian Orthodox Church, the Catholic Church, the Jewish Community, the Reform Christian Church, the Evangelic Christian Church, the Slovak Evangelic Church, and the Islamic Community. The religious communities having the right to conduct religious education in schools are precisely those from which this possibility was taken in 1947 by the communist regime, and this is because Serbia presently does not possess any other legal instrument which would define its relations with religious communities.

Cooperation between these seven religious communities in restoring religious education to the Serbian educational system has provided a unique example to the modern world.

*B. Norms Governing the Introduction of Religious
Education into State Schools*

A parent or legal guardian decides whether a primary school student will attend a religious class or a class of an alternative subject

13. Law on Primary Education, Official Gazette of the Republic of Serbia, No. 22/2002, at 2 (Apr. 27, 2002) [hereinafter Law on Primary Education].

14. Law on Secondary Education, Official Gazette of the Republic of Serbia, No. 23/2002, at 2 (May 9, 2002) [hereinafter Law on Secondary Education].

with ethical and humanistic contents.¹⁵ The Minister of Education has a right to designate the alternative subject, both in primary and secondary school.¹⁶ Secondary school students, on the other hand, may individually decide which course to take.¹⁷ During the 2001–2002 academic year, the introductory phase of this new system, more than half of the first grade primary school students and more than a third of the first grade secondary school students chose to take a religious education course.¹⁸

The Minister of Education and the Minister of Religions adopt the curriculum for religious education at the joint proposal of all the religious communities entitled to conduct religious education.¹⁹ Accordingly, the agreement of all religious communities is a prerequisite also for approval of textbooks and other educational means for religious education.²⁰

The Minister of Education, at the joint proposal of the Minister of Religions and the religious communities, determines qualifications for teachers of religious education.²¹ Those who teach primary-level religious education to students in the first through fourth grades must at least have a two-year college degree.²² Those who work with pupils in the remaining grades of the primary schools, as well as in the secondary schools, must have a university degree.²³ The Minister of Education, again at the joint proposal of the Minister of Religions and the religious communities, prepares a list of the approved

15. Law on Primary Education, *supra* note 13, art. 22 ¶ 2.

16. *Id.* ¶ 1; Law on Secondary Education, *supra* note 14, art. 27 ¶ 3. In school years 2001–2002 and 2002–2003, the alternative subject has been called “Civic Education.”

17. Law on Secondary Education, *supra* note 14, art. 27 ¶ 4.

18. Records of students who applied for religious and civic education in primary and secondary schools in the 2001–2002 academic year, the Ministry of Education and Sport, December 2001.

19. Law on Primary Education, *supra* note 13, art. 20 ¶ 2; Law on Secondary Education, *supra* note 14, art. 24 ¶ 2.

20. Law on Primary Education, *supra* note 13, art. 23 ¶ 2; Law on Secondary Education, *supra* note 14, art. 25 ¶ 2.

21. Law on Primary Education, *supra* note 13, art. 67 ¶ 4; Law on Secondary Education, *supra* note 14, art. 70 ¶ 12.

22. See the regulations on the type of qualifications of religious instructors and the criteria and methods of awarding grades to students who attend religious education in the Official Gazette of the Republic of Serbia—Educational Gazette, No. 5/2001, at 13 (Oct. 20, 2001).

23. *Id.* at 6.

religious education instructors annually.²⁴ Each religious education instructor must be on this list to participate in religious education, and the participating religious communities appoint the instructors for each school.²⁵ Additionally, students receive descriptive grades in their religion or ethics courses that do not affect their academic standing.²⁶

III. PRIVATIZATION IN SERBIA: THE RESTITUTION OF AND INDEMNIFICATION FOR PROPERTY EXPROPRIATED AFTER WORLD WAR II

The Ministry of Religions' second project involves the restitution of property to religious communities. Such restitution is one of the key forms of rectifying the injustices inflicted during the more than five decades of communist rule in Serbia.²⁷ A rapid adoption of such a regulation would at least partially redress the wrong done to religious communities when valuable property was taken from them without compensation. Following a brief explanation of the historical background of the subject, this section addresses why and how such restitution could take place.

A. Property Infringements Under Former Regimes

Religious communities (in particular, the Serbian Orthodox Church, the Jewish community, and the Catholic Church) were among the largest property holders in Serbia before World War II. With the introduction of communism in Serbia and the rest of Yugoslavia, the government began to expropriate property belonging to private owners, including religious communities.²⁸ In general,

24. Law on Primary Education, *supra* note 13, art. 67 ¶ 5; Law on Secondary Education, *supra* note 14, art. 70 ¶ 13.

25. Law on Primary Education, *supra* note 13, art. 67 ¶ 6; Law on Secondary Education, *supra* note 14, art. 70 ¶ 14.

26. Law on Primary Education, *supra* note 13, art. 48 ¶ 5; Law on Secondary Education, *supra* note 14, art. 48 ¶ 6.

27. See Milosavljevic, *supra* note 1, at 324–32 (After the change in government in 2000, “religious communities expected that the past injustices would be redressed.”).

28. A large portion of this expropriation, or nationalization, was part of a land redistribution scheme under the communist agricultural land reform. See LAMPE, *supra* note 3, at 244 (discussing communist agricultural land reform and accompanying problems).

only small homes and small farming tracts escaped expropriation, to the extent they were regarded as necessary for living.²⁹

After the ouster of the post-communist regime in 2000, the new government authorities faced the issue of restoring property expropriated by the state after World War II.³⁰ Additionally, the fact that Serbia went through a ten-year period in which communism technically ceased to function, but democracy was not yet introduced, complicated the post-communist restitution of property.³¹ During that ten-year period, the state sold some of the expropriated property in self-profiting transactions. For example, Milošević loyalists bought factories from the government for pennies on the dollar. The government also sold apartments at artificially low prices to pacify the war-torn, impoverished Serbian population. Some apartments sold for as little as between one- and five-hundred dollars.

*B. The Restitution of Property with Regard to Churches
and Religious Communities*

In an effort to remedy some of the unjust misappropriations of private property from religious communities, the Draft Law on the Restitution of Property to Churches and Religious Communities attempts to regulate this specific aspect of the general restitution of property and privatization. The restitution of property is designed to serve an essential role in Serbia's continuing democratic transition. It reinforces Serbia's commitment to individual property rights, a secure market economy, and the establishment of a civil society. Furthermore, if the restitution of property to religious communities is implemented, regardless of the specific legal processes involved, it will reestablish the financial independence of religious communities and will strengthen church-state relations. The relationship between church and state will be especially valuable during the upcoming years when state intervention decreases, in both economic and non-economic realms, and reliance upon support from the religious communities becomes even more important than it is now to certain

29. *Id.* ("maximum holdings of private land were now limited to 25–35 hectares").

30. Even though many economic reforms had taken place after Tito's death in 1980, social ownership of property continued to thrive as an economic policy. *See id.* at 325–28.

31. *See, e.g.,* Burns, *supra* note 7 (noting sixty percent unemployment and a ten-thousand percent inflation rate in the two years following Milošević's election in 1990).

social groups within Serbia's population. The country will benefit from ensuring religious communities' valuable social influence.

1. Reasons for restitution and indemnification

Several reasons warrant restoring property to private landowners or, if the restitution is not possible, compensating private landowners for property unjustly taken from them. First, these proceedings will play an important role in transforming Serbia's socioeconomic system to meet modern demands. Under Milošević, the conversion of so-called social property (created during the Communist era) into state property was never successfully completed.³² Because the state never took actual ownership of the property, it lacks actual authority to effectively manage the property.

Accelerating land reforms will bring Serbia and Montenegro in line with the economic reforms of the other eastern European countries, which are currently ten years ahead of Serbia and Montenegro in their economic transitions. Also, returning property to private landowners will positively influence the legal and psychological security of investors, accelerate privatization, reinforce respect for property rights, and help establish a free market. Private ownership of land will facilitate loans, especially with respect to construction and real estate development, and stimulate economic growth by providing easier and more widespread access to financial resources.

In addition, the privatization of urban construction land, which will occur more quickly through its restitution to the former owners, would encourage the maintenance and legalization of illegally constructed buildings. Finally, the restitution of property will sever any final ties between present-day Serbia and its communist past, providing favorable international publicity.

According to recent surveys, seventy percent of voters support these restitution proceedings.³³ Proponents of these types of

32. Social property, a term based on a utopian ideology, is property that has no owner. State property, on the other hand, belongs to the state, which can control and manage that property.

33. The government should consider various types of property in these restitution proceedings, including both land and movable property. Examples of different types of land and immovable objects are agricultural land, urban construction land, commercial real estate, factories, apartments, and other buildings. Movable property includes, but is not limited to, deposit accounts, stock, works of art, and similar items.

proceedings have already voiced their support in both Serbia and abroad. Additionally, a large number of influential international organizations and foundations from Western countries have expressed an interest and willingness to help in this important process.

2. A proposed solution: priority of restitution over indemnification

The Ministry of Religions believes the best solution for the privatization issue would be to (1) restore, if possible, to former owners what is currently owned by the state and (2) compensate owners to the greatest degree possible for property that cannot be restored. Such a solution would encompass the formation of a new "Agency on Denationalization." Such an agency, guided by pertinent regulations and laws, would take on several responsibilities in conducting denationalization and would promote the efforts of the government to right the wrongs done with respect to the expropriation of private property. One important role of the agency would be to consolidate all existing mechanisms and projects into an integrated, unified system that could more efficiently carry out the restitution process.

As a preparatory step, the Agency for Denationalization would conduct surveys and assess the size of the property involved in the restitution and indemnification proceedings. As a governmental body, the agency could draft or suggest regulations that would govern the legal aspects involved in these proceedings, such as determining how much property a landowner was entitled to, how to return the property, and how to deal with alternative solutions when it is not feasible to return the property.

In addition, the agency would ensure the promotion and adoption of all regulations related to its sphere of responsibility, working to protect both the interests of the state and of the individual in an equitable fashion.

To assist in making these assessments and conducting other tasks, the Agency could also enlist the assistance of foreign experts.

IV. THE LAW ON BROADCASTING

The third and final project used to reinforce religious freedom in Serbia is the recently enacted Law on Broadcasting. This law, adopted in July 2002, allows religious communities to establish radio

and television stations³⁴ and permits these religious institutions to participate in the distribution and monitoring of the use of radio frequencies by giving them the power and duty to nominate a member of the nine-member Broadcasting Agency Council.³⁵ In harmony with the goals behind the denationalization process, religious communities are exempt from paying broadcasting fees until the denationalization process is complete.³⁶ Religious communities, in this way, enjoy equality in the media sphere as well as an opportunity to add to and enrich media broadcasting through their spiritual and moral influence.³⁷

V. CONCLUSION

The above measures provide evidence that religious communities in Serbia are no longer at a disadvantage, nor are they discriminated against because of their doctrines. The recent adoption of laws, such as the laws on primary and secondary education and the Law on Broadcasting, coupled with other proposed acts, is a step towards harmonizing the Serbian law with that of its European neighbors. These laws also, at least partially, attempt to compensate the religious communities for the injustices they experienced during more than five decades of communist rule. The Ministry of Religions believes that these three projects—the reestablishment of religious education in schools, the restitution of property, and the enactment of the Law on Broadcasting—will begin to restore equality between believing and non-believing citizens within the Serbian population.

34. Broadcasting Law (July 2002), at <http://www.anem.org.yu/anemnews/indexEn.jsp> (last modified Jan. 21, 2003) see also Djordje Zorkic, *How the Broadcasting Law Was Tempered: No One is Completely Satisfied*, MEDIA ONLINE (Aug. 6, 2002), at http://www.mediaonline.ba/mediaonline/attach_eng/6573.pdf; *Democratic Transformation of Media Through Law on Broadcasting* (July 15, 2002), at <http://www.serbia.sr.gov.yu/news/2002-07/15/325192.html> (noting that this law is the first of its kind in Serbian history).

35. Broadcasting Law, *supra* note 34, arts. 22–23.

36. See *id.* art. 67 ¶ 3.

37. The Draft Act on Religious Freedom would also guarantee the right of churches and religious communities to use various forms of media to inform the public on the activities of their communities. See Draft Act on Religious Freedom, *supra* note 10, art. 19; see also Milosavljevic, *supra* note 1, at 328.

